

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESSICA ZARETZKE, an individual,

Plaintiff,

vs.

THE BOEING COMPANY,
a Washington company,

Defendant.

Case No. 2:17-cv-00971-JLR

**DEFENDANT THE BOEING
COMPANY'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

**NOTE ON MOTION CALENDAR:
SEPTEMBER 14, 2018**

ORAL ARGUMENT REQUESTED

1 Defendant the Boeing Company (“Boeing”) hereby submits its Motion to Enforce
 2 Settlement Agreement with Plaintiff Jessica Zaretzke (“Plaintiff”) (Boeing and Plaintiff are
 3 collectively referred to as the “Parties”). In support thereof, Boeing states as follows:

4 1. Plaintiff filed her original complaint in this case on June 5, 2017, which alleged:
 5 (1) discrimination because of her sex (RCW 49.60.30; RCW 49.60.210); (2) retaliation (RCW
 6 49.60.210); and (3) wrongful termination. Dkt. 1-2. On June 27, 2017, Boeing removed the case
 7 to the above-entitled Court. Dkt. 1.

8 2. At the time this case was filed, Plaintiff was represented by George O. Tamblyn,
 9 Vera P. Fomina, and Gregory M. Skidmore, of Mercer Island Law Group, PLLC. Dkt. 1-2.

10 3. On March 9, 2018, George O. Tamblyn of Mercer Island Law Group filed a
 11 Notice of Withdrawal stating that “effective March 2, 2018, George O. Tamblyn of Mercer
 12 Island Law Group PLLC, hereby withdraws as counsel of record for Plaintiff, Jessica Zaretzke.
 13 Skidmore & Fomina, PLLC, remain attorneys of record for the Plaintiff.” Dkt. 18.

14 4. On April 3, 2018, George O. Tamblyn of Mercer Island Law Group filed a Claim
 15 of Attorney’s Lien Against The Boeing Company. Dkt. 19. Mr. Tamblyn “claimed the lien for
 16 unpaid fees for services rendered to Jessica Zaretzke in th[is] action in the amount of up to 45%
 17 of the gross recovery on the basis of the contingent fee agreement entered into by the
 18 undersigned attorney and Jessica Zaretzke, together with interest.” *Id.*

19 5. On June 4, 2018, the Parties mediated this action, agreed to a settlement, and
 20 executed a Memorandum of Material Terms Subject to CR 2A (the “Settlement Agreement”).
 21 *See Declaration of Nancy Villarreal In Support of Defendant’s Motion to Seal (“Villarreal Decl.*
 22 *ISO Motion to Seal”), ¶ 2, Exh. A.*

23 6. As part of the settlement, the Parties agreed that disbursement of settlement funds
 24 would be contingent upon the filing of a Release of Claim of Attorney’s Lien Against the Boeing
 25 Company filed by Mercer Island Law Group and that said release would constitute a full and
 26 complete release by Mercer Island Law Group of any and all claims it might have for attorneys’

1 fees, costs, or any other expenses related to this case. *Id.* ¶¶ 2-3, Exh. A.

2 7. On June 13, 2018, Plaintiff's counsel requested that Boeing retain the attorneys'
3 fee portion of the settlement funds, or deposit the attorneys' fee portion into the court registry,
4 pending resolution of an attorneys' fee dispute between Mercer Island Law Group and Skidmore
5 & Fomina. Declaration of Nancy Villarreal In Support of Motion to Enforce ("Villarreal Decl.
6 ISO Motion to Enforce"), ¶ 2, Exh. B. Plaintiff's counsel stated that she did "not know how long
7 the dispute as to attorneys' fee distribution will take." *Id.*

8 8. On June 18, 2018, Boeing responded stating that Boeing could not release the
9 settlement funds until the lien issue was resolved and the lien release filed, as agreed at
10 mediation. Boeing stated that it hoped Mercer Island Law Group and Skidmore & Fomina could
11 resolve their fee dispute quickly. Villarreal Decl. ISO Motion to Enforce, ¶ 3, Ex. C.

12 9. On July 9, 2018, Mercer Island Law Group filed a Release of Attorney's Lien
13 Against The Boeing Company, which stated that Mercer Island Law Group was releasing the
14 attorney's lien that Mercer Island Law Group made on April 3, 2018. Dkt. 20. In addition, the
15 Release of Attorney's Lien Against The Boeing Company stated the "lien release is made
16 pursuant to, and governed by, the terms of a binding CR 2A Agreement dated July 2, 2018."¹
17 Dkt. 20.

18 10. On July 12, 2018, Plaintiff's counsel requested that Boeing release the attorneys'
19 fee portion of the settlement funds to a different law firm, Smith & Hennessey, while Mercer
20 Island Law Group and Skidmore & Fomina resolved their attorneys' fee dispute. Villarreal Decl.
21 ISO Motion to Enforce, ¶ 4, Exh. D. On July 17, 2018, Boeing stated that, as it had previously
22 advised Plaintiff, the attorneys' fee dispute needed to be resolved before Boeing could release
23 the settlement funds. Boeing stated that it hoped both firms would continue to work on resolving
24 the attorneys' fee issue quickly. *Id.*, ¶ 5, Exh. E.

25
26 ¹ It appears the referenced date of July 2, 2018 is an error and that Mercer Island Law Group
intended to reference the "CR 2A Agreement" between the Parties dated June 4, 2018.

1 11. On July 30, 2018, Plaintiff's counsel requested the trial in this matter be
2 continued by three months given the attorneys' fee dispute between Mercer Island Law Group
3 and Skidmore & Fomina. Villarreal Decl. ISO Motion to Enforce, ¶ 6.

4 12. On August 2, 2018, Plaintiff's counsel requested six months instead of three
5 months in order to allow Skidmore & Fomina and Mercer Island Law Group to resolve the
6 attorneys' fee dispute. Villarreal Decl. ISO Motion to Enforce, ¶ 7, Exh. F. Boeing responded
7 that Boeing would not be joining Plaintiff's motion to continue the case deadlines given the
8 Parties had settled the case in June 2018 and Mercer Island Law Group and Skidmore & Fomina
9 had had more than two months to resolve their fee dispute. *Id.* ¶ 8, Exh. G. Boeing stated it did
10 not believe further delaying closure of the case was warranted. *Id.*

11 13. On August 21, 2018, the Parties met and conferred telephonically regarding
12 Boeing's Motion to Seal and Motion to Enforce Settlement. Following the call, Plaintiff
13 requested copies of both motions and advised that Skidmore & Fomina, and Mercer Island Law
14 Group, might be willing to stipulate to said motions. Villarreal Decl. ISO Motion to Enforce, ¶
15 9. Boeing provided both firms drafts of its Motion to Seal and Motion to Enforce Settlement. In
16 response, Skidmore & Fomina stated they believed the motions were unnecessary and provided a
17 copy of the draft settlement agreement signed by Plaintiff, to which Plaintiff made substantive
18 modifications. Notably, Plaintiff removed language from the draft settlement agreement stating
19 that Mercer Island Law Group's lien release would be a full and complete release by Mercer
20 Island Law Group of any and all claims Mercer Island Law Group has, or might have, for
21 attorney's fees, costs, or any other expenses relating to this action. Mercer Island Law Group
22 responded to the request to join in Boeing's motions by stating that it "accepts the proposed
23 order." *Id.*

24 14. Skidmore & Fomina's response and handling of the attorneys' fee dispute
25 between Mercer Island Law Group and Skidmore & Fomina highlights the need for Boeing to
26 obtain an order to enforce the Settlement Agreement, consistent with the terms discussed below.

1 15. “Compromises of disputed claims are favored by the courts.” *Williams v. First*
2 *Nat. Bank of Pauls Valley*, 216 US 582, 595 (1910). “It is well settled that a district court has the
3 equitable power to enforce summarily an agreement to settle a case pending before it.” *Callie v.*
4 *Near*, 829 F.2d 888, 890 (9th Cir. 1987). “To be enforceable, a settlement agreement must meet
5 two requirements: (1) it must be a complete agreement and (2) both parties must have agreed to
6 its terms or authorized their representatives to settle the case.” *Nielsen v. Unum Life Ins. Co. of*
7 *Am.*, No. C13-1717RSM, 2016 WL 4063970, at *1 (W.D. Wash. Jan. 4, 2016) (citing *McKelvey*
8 *v. Am. Seafoods*, No. C99-2108L, 2000 WL 33179292, at *1 (W.D. Wash. Apr. 7, 2000)
9 (citations omitted). “Normally, if a party enters into a settlement agreement knowingly and
10 voluntarily, the agreement is treated as a binding contract.” *Arnold v. United States*, 816 F.2d
11 1306, 1309 (9th Cir. 1987).

12 16. Here, the Settlement Agreement satisfies the foregoing requirements, and thus, is
13 enforceable. The Settlement Agreement is complete in that it sets forth the amount and other
14 material terms of the settlement. Moreover, the Parties signed the Settlement Agreement. *See*
15 Villarreal Decl. ISO Motion to Seal, Exh. A. The only outstanding issue is the attorneys’ fee
16 dispute between Skidmore & Fomina and Mercer Island Law Group, which Plaintiff’s counsel
17 has indicated is expected to remain unresolved for an undefined amount of time.

18 17. Accordingly, given the Parties settled this case more than two months ago, given
19 the uncertainty regarding when the attorneys’ fee dispute will be resolved between Skidmore &
20 Fomina and Mercer Island Law Group, and to bring closure to this case, Boeing hereby requests
21 the Court (1) issue an order enforcing the Parties’ Settlement Agreement; (2) order Plaintiff to
22 advise Boeing of the amount of the settlement to be designated as attorneys’ fees within seven
23 days of the Court’s order; (3) order the Parties to finalize and execute a formal settlement
24 agreement consistent with the Parties’ Memorandum of Material Terms Subject to CR 2A dated
25 June 4, 2018 within fourteen days of the Court’s order on this Motion; and (4) order that Boeing
26 will not be held liable to Plaintiff, Mercer Island Law Group, PLLC, or Skidmore & Fomina,

1 PLLC, for any attorneys' fees, costs, or other expenses relating to this case, other than those set
2 forth in the long form settlement agreement to be executed by the Parties within fourteen days of
3 the Court's order.

4 Dated: August 27, 2018.

OGLETREE, DEAKINS, NASH, SMOAK & STEWART,
P.C.

6 /s/ Laurence A. Shapero

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11 By: /s/ Nancy Villarreal

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2018, I electronically filed the foregoing document with the clerk of the U.S. District Court for the Western District of Washington at Seattle using the electronic case filing system of the court.



Monet R.A. Torres

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MOTION TO ENFORCE SETTLEMENT
AGREEMENT - 6
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